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H.C.P.No.800 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

H.C.P.No.800 of 2023

Vaishali

.. Petitioner

Vs

- 1.The State rep. By
The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.Commissioner of Police,
Office of Commissioner of Police,
Avadi City Police Chennai,
Avadi, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Anti Land Grabbing Special Cell,
Central Crime Branch,
Avadi City, Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of habeas corpus to call for the records
of the second respondent in connection with order made in
No.71/BCDFGISSSV/2023 dated 18.03.2023 passed against

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petitioner's husband Arivunithi, age 29, S/o.Kumar, who is confined at Central Prison, Puzhal, Chennai – 66 and quash the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.S.Senthilvel
for Mr.P.K.Ilavarasan

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

We find that prima facie case for admission has been made out and therefore we are making formal order of admission as Additional Public Prosecutor has accepted notice on 04.05.2023 itself.

2. As four weeks therefrom i.e., four weeks from 04.05.2023 has elapsed, main habeas corpus petition was taken up with the consent of both sides.

3. Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed by the wife of the detenu assailing a 'preventive detention order dated 18.03.2023 bearing reference



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No.71/BCDFGISSSV/2023' [hereinafter 'impugned preventive detention order' for the sake of convenience and brevity] made by second respondent (hereinafter 'detaining authority' for the sake of convenience). To be noted, fourth respondent is the sponsoring authority.

4. Impugned preventive detention order has been made under 'The Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Cyber law offenders, Drug-offenders, Forest-offenders, Goondas, Immoral traffic offenders, Sand-offenders, Sexual-offenders, Slum-grabbers and Video Pirates Act, 1982 (Tamil Nadu Act No.14 of 1982)' [hereinafter 'Act 14 of 1982' for the sake of convenience and clarity] on the premise that the detenu is a 'Goonda' within the meaning of Section 2(f) of Act 14 of 1982.

5. There is one adverse case. The ground case which constitutes substantial part of substratum of the impugned preventive detention order is Crime No.25 of 2022 on the file of Central Crime Branch EDF , Avadi for alleged offences under Sections 406, 420, 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience



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and clarity]. Owing to the nature of the challenge to the impugned preventive detention order, it is not necessary to delve into the factual matrix or be detained further by facts.

6. Mr.S.Senthilvel, learned counsel representing the counsel on record for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all respondents are before us.

7. Mr.S.Senthilvel, learned counsel representing the counsel on record for the petitioner predicated his campaign against the impugned preventive detention order on the point that subjective satisfaction arrived at by the Detaining Authority as regards imminent possibility of detenu being enlarged on bail is flawed / impaired. Elaborating on this point, learned counsel drew our attention to a portion of paragraph 4 of the grounds of impugned preventive detention order, which reads as follows:

'4. The sponsoring authority has stated that it is learnt that the relatives of Thiru.Arivunithi are taking steps to take him on bail in Avadi City, Central Crime Branch Crime No.25/2022 case by filing another bail application before the appropriate



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court...'

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8. Adverting to the aforementioned portion of the impugned preventive detention order, learned counsel submitted that the detaining authority has relied on the special report from the sponsoring authority for arriving at subjective satisfaction qua imminent possibility of detenu being enlarged on bail. This document has been furnished to the detenu at pages 403 and 405 of the grounds booklet and a perusal of the same reveals that the same does not contain a date. Learned counsel points out that the special report is undated and submits that subjective satisfaction arrived at by the detaining authority is impaired.

9. The aforementioned point turns heavily on records and therefore learned Prosecutor really does not have much of a say.

10. Be that as it may, this Bench considered the argument and finds that though the status report has been furnished in the grounds booklet, as the same does not contain date it is not clear as to whether the same was prior to the date of impugned preventive detention order or after the impugned preventive detention order. In such cases, the benefit of doubt has to be given to the detenu. If the benefit of doubt



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is given to the detenu and if it is viewed in the light of the indisputable position that the special report of the sponsoring authority is a self-serving document, we have no hesitation in saying that subjective satisfaction arrived at by the detaining authority is impaired. This means that impugned preventive detention order deserves to be dislodged.

11. Ergo, the sequitur is, captioned HCP is allowed. Impugned preventive detention order dated 18.03.2023 bearing reference No.71/BCDFGISSSV/2023 made by the second respondent is set aside and the detenu Thiru.Arivunithi, aged 29 years, Son of Thiru.Kumar, is directed to be set at liberty forthwith, if not required in connection with any other case / cases. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
11.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Puzhal, Chennai.

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- 1.The Additional Chief Secretary to the Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 9.
- 2.Commissioner of Police,
Office of Commissioner of Police,
Avadi City Police Chennai,
Avadi, Chennai – 7.
- 3.The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
- 4.The Inspector of Police,
Anti Land Grabbing Special Cell,
Central Crime Branch,
Avadi City, Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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